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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,385	12/27/2000	Joyo Wijaya	WVANP013	6355
22434	7590	02/23/2004	EXAMINER	
BEYER WEAVER & THOMAS LLP P.O. BOX 778 BERKELEY, CA 94704-0778			THEIN, MARIA TERESA T	
			ART UNIT	PAPER NUMBER
			3625	
DATE MAILED: 02/23/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/750,385

Applicant(s)

WIJAYA ET AL. *SW*

Examiner

Marissa Thein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 December 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## DETAILED ACTION

### *Drawings*

The drawings filed on December 27, 2000 are acceptable.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1-13, 15-19, 23-29 and 33 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,324,520 to Walker.**

Regarding claims 1, 15, 23, and 33, Walker discloses a method, computer program product and a system for effecting substitution of at least one ordered item, comprising:

- the receiving at least one customer order, the least customer order including at least one order line item relating to an ordered quantity of a particular item of inventory (see at least col. 2, line 66 – col. 3, line 1; col. 7, lines 1-6; col. 11, lines 24-26; col. 11, lines 38-41);
- the analyzing a selected portion of the received customer orders to determine whether at least one item of inventor has been oversold (see at least col. 7, lines

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24-36; col. 8, lines 13-49; col. 11, lines 24-47; col. 9, lines 39-47; col. 9, line 62-  
col. 10, line 4; col. 11, line 59-col. 12, line 8);

- the order line items relating to an identified oversold item, wherein each order line item is associated with a respective customer order (see at least col. 7, lines 24-36; col. 8, lines 13-49; col. 11, lines 24-47; col. 9, lines 39-47; col. 9, line 62-col. 10, line 4; col. 11, line 59-col. 12, line 8); and
- the substituting, based upon predefined criteria, at least one second item for the identified oversold item in selected customer orders (see at least col. 7, line 50-col. 8, line 2).

Regarding claims 2-5, Walker discloses comparing the analyzed order data to inventory data to determine whether at least one item of inventory has been oversold (see at least col. 7, lines 5-8; col. 7, lines 24-36; col. 8, lines 13-30; col. 8, lines 66- col. 9, line 6; col. 9, lines 39-47; col. 9, line 62 – col. 10, line 5; col. 11, lines 24-47); comparing occurs before fulfillment of the portion of received customer orders (see at least col. 11, line 24-col. 12, line 8); and substituting includes selecting, using the predefined criteria, desired order line items corresponding to the identified oversold item (see at least col. 7, line 50 –col. 8, line 2; col. 11, line 59 –col. 12, line 8).

Regarding claims 5-6, 9-11, 16-18, and 24-26, Walker discloses the predefined criteria includes instructions for minimizing a number of order substitutions to be performed for each customer order; the predefined criteria includes instructions for selecting for substitution order line item which have a relatively highest order quantity; the ordered item substitution is performed by an automated computer process;

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predefined criteria includes a sorted list of substitute products from which the second item is chosen; and predefined criteria includes ratio rules for substituting the second item for the first item. (See at least Figure 1; col. 7, line 50 –col. 8, line 2; col.9 ,line 62- col. 10, line 4; col. 10, lines 14-16; col. 11, line 59 – col. 12, line 8; col. 12, line 62 – col. 13, line3; col. 13, lines 8-10)

Regarding claims 7-8, Walker discloses the oversold item substitution occurs at a time of fulfillment of the portion of received customer orders and the fulfillment of an order is without intervention from a human operator (see at least col. 3, lines 1-7; col. 4, lines 39-50; col. 11, line 59-col.12, line 8).

Regarding claims 12-13 and 27-28, Walker discloses sorting the identified order line items based upon the quantity value associated with each of the identified order line items; and sorting the identified order line items based upon a number of substitutions which has already been implemented in each customer order associated with the identified order line items. (See at least Figures 3-4; col. 6, lines 61-67; col. 7, lines 24-36; col. 7, lines 42-col. 8, line 7; col. 8, lines 13-30; col. 8, lines 45-49; col. 12, line 62 – col. 13, line 3).

Regarding claims 19-20, Walker discloses predefined criteria to determine a first preferred substitution item for the identified oversold item; determining whether a sufficient quantity of the first preferred substitution item is available to be substituted for the identified oversold item. (See at least Figure 1; col. 7, line 50 –col. 8, line 2; col.9 ,line 62- col. 10, line 4; col. 10, lines 14-16; col. 11, line 59 – col. 12, line 8; col. 12, line 62 – col. 13, line3; col. 13, lines 8-10)

Regarding claim 29, Walker discloses a method for effecting substitution of at least one ordered item, comprising:

- the receiving at least one customer order, the least customer order including at least one order line item relating to an ordered quantity of a particular item of inventory (see at least col. 2, line 66 – col. 3, line 1; col. 7, lines 1-6; col. 11, lines 24-26; col. 11, lines 38-41);
- the analyzing a selected portion of the received customer orders to determine whether at least one item of inventor has been oversold (see at least col. 7, lines 24-36; col. 8, lines 13-49; col. 11, lines 24-47; col. 9 ,lines 39-47; col. 9, line 62- col. 10, line 4; col. 11, line 59-col. 12, line 8);
- the order line items relating to an identified oversold item, wherein each order line item is associated with a respective customer order (see at least col. 7, lines 24-36; col. 8, lines 13-49; col. 11, lines 24-47; col. 9 ,lines 39-47; col. 9, line 62- col. 10, line 4; col. 11, line 59-col. 12, line 8);
- the substituting, based upon predefined criteria, at least one second item for the identified oversold item in selected customer orders (see at least col. 7, line 50- col. 8, line 2);
- the substituting includes consulting the predefined criteria to determine a first preferred substitution item for the identified oversold item (see at least Figure 1; col. 7, line 50 –col. 8, line 2; col.9 ,line 62- col. 10, line 4; col. 10, lines 14-16; col.

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11, line 59 – col. 12, line 8; col. 12, line 62 – col. 13, line 3; col. 13, lines 8-10);  
and

- the substituting includes determining whether a sufficient quantity of the first preferred substitution item is available to be substituted for the identified oversold item (see at least Figure 1; col. 7, line 50 – col. 8, line 2; col. 9, line 62 – col. 10, line 4; col. 10, lines 14-16; col. 11, line 59 – col. 12, line 8; col. 12, line 62 – col. 13, line 3; col. 13, lines 8-10)

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 14, 21-22, 31-32 and 34-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,324,520 to Walker in view of U.S. Patent NO. 5,963,919 to Brinkley et al.** Regarding claims 14 and 34, Walker substantially discloses the claimed invention, however, it does not disclose the aggregating a selected portion of the received customer orders to determine whether at least one item of inventory has been oversold. Walker discloses the monitoring (analyzing) of the selection of a first product by a purchaser (col. 3, lines 1-7). Brinkley, on the other hand, teaches the aggregating a selected portion of the received customer orders to determine whether at least one item of inventory has been oversold (see at least col. 4, lines 35-41; col. 4, lines 55-61; col. 5, lines 9-15). It would have been obvious to one of

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ordinary skill in the art at the time of the invention was made to modify the method of Walker, to include the aggregating, as taught by Brinkley, in order to fulfill customer's orders (col. 1, lines 15-16).

Regarding claim 35 (which depend on claim 34), Walker discloses the substitution is performed automatically, without intervention by a human (see at least col.7, lines 50-58; col. 10, lines 14-16).

Regarding claims 21-22 and 31-32, Walker substantially discloses the claimed invention, however, it does not disclose the partially substituting and fully substituting. Walker discloses the determination of substitute products and/or services to over when a selected product and/or service is unavailable (col. 2, line 66- col. 3, line 1). Brinkley, on the other hand, teaches the partially and fully substituting (see at least col. 4, lines 35-41; col. 4, lines 62-col. 5, lines 9-15; col. 5, line 43 –col. 6, line 35). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Walker, to include the aggregating, as taught by Brinkley, in order to fulfill customer's orders (col. 1, lines 15-16).

**Claims 20 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,324,520 to Walker.** Walker discloses substantially the claimed invention, however, it does not explicitly disclose the determination of a second preferred substitution item for the identified oversold item in response to a determination that there is an insufficient quantity of the first preferred substitution item available to be substituted for the identified oversold item. It would have been obvious to one of ordinary skill in the art to have provided the substitution already disclosed by Walker,



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such substitution would have been recognized by the skill artisan as providing numerous substitution in order to fulfill and satisfy the customer's order. Moreover, applicant has not persuasively demonstrated that the second substitution is critical or is anything more than substituting an item for the purpose taught by Walker. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide a second substitution for the purpose of fulfilling and satisfying the customer's order (Walker col. 2, lines 41-42).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 5,878,401 to Joseph discloses a sales system that enables customers to view alternative items in the event, the customer orders an item that is out of stock.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marissa Thein whose telephone number is 703-305-5246. The examiner can normally be reached on M-F 8:30-5:30.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Smith can be reached on 703-308-3588. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mtot

February 13, 2004

  
Jeffrey A. Smith  
Primary Examiner